



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-69
January 23, 2012

MISCELLANEOUS ADMINISTRATIVE CHANGES

BACKGROUND: This Procurement Notice (PN) revises the NASA FAR Supplement (NFS) to make the following administrative and editorial changes:

1. NFS Part 1850 Extraordinary Contractual Actions is revised to be numerically consistent with FAR 50 which was changed in FAC 2005-21, dated November 7, 2007;
2. NFS Clause 1852.215-84 is revised to remove an insert where a fill-in was required by the Contracting Officer and replace it with a NASA URL website where the Agency and Center Ombudsman information will be continually maintained and updated; and
3. NFS Clauses 1852.217-71 and 1852.217-72 are revised to change the term "Commerce Business Daily (CBD)" to "Governmentwide Point of Entry (GPE)" consistent with the FAR Subpart 2.101 Definitions.

ACQUISITIONS AFFECTED BY CHANGES: None.

ACTION REQUIRED BY CONTRACTING OFFICERS: Modify those contracts to incorporate the new updated NFS clauses 1852.215-84, 1852.217-71, and 1852.217-72 if the period of performance will extend beyond January 23, 2012. Include the updated revised clauses in all solicitations issued and contracts awarded after publication of this rule.

PROVISION AND CLAUSE CHANGES: NFS 1852.215-84, 1852.217-71, and 1852.217-72.

PARTS AFFECTED: Parts 1850 and 1852.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1850, 52:21, 52:22, 52:23, 52:24, 52:33, and 52:34 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: The PN was published as a direct final rule in the Federal Register (76 FR 2011-30142) on November 23, 2011, and is effective January 23, 2012.

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//s//

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Enclosures

DISTRIBUTION LIST:
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PART 1850
EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

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PART 1850
EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 1850.1 – Extraordinary Contractual Actions

1850.102 Delegation of and limitations of exercise of authority.

1850.102-2 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

1850.103 Contract adjustments.

1850.103-5 Processing cases.

1850.103-570 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law, including in the forwarding letter --

- (1) The nature of the case;
- (2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts

and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

- (c) Electronic submittal is preferred for unclassified material.

1850.103-6 Disposition.

1850.103-670 Implementation of the Contract Adjustment Board's decision.

- (a) The contracting officer shall take action authorized in the CAB's decision.
- (b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law.

1850.104 Residual powers.

1850.104-3 Special procedures for unusually hazardous or nuclear risks.

- (a) Indemnification requests.
 - (1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.
 - (iii) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.
- (b) Action on indemnification requests.
 - (1) If recommending approval, the contracting officer shall forward the required information to the Assistant Administrator for Procurement, Program Operations Division, along with the following:
 - (i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.
 - (ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.103-6, the Memorandum of Decision shall contain the following:
 - (A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);
 - (B) A complete discussion of the contractor's financial protection program; and
 - (C) The extent to, and conditions under, which indemnification is being approved for subcontracts.
 - (d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104-3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

1850.104-370 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause

should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.104-3. The prime contractor's request shall provide information responsive to 1850.104-3, FAR 50.104-3, and FAR 50.104-3(b)(1)(i), (ii), (iv), (v), and (vii). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

1850.104-70 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

1852.215-77 Preproposal/Pre-bid Conference.

As prescribed in 1815.209-70(a), insert the following provision:

**PREPROPOSAL/PRE-BID CONFERENCE
(DECEMBER 1988)**

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215-78 Make or Buy Program Requirements.

As prescribed in 1815.408-70(a), insert the following provision:

**MAKE OR BUY PROGRAM REQUIREMENTS
(FEBRUARY 1998)**

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) **15.407-2**. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215-79 Price Adjustment for "Make-or-Buy" Changes.

As prescribed in 1815.408-70(b), insert the following clause:

**PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES
(DECEMBER 1988)**

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

ITEM DESCRIPTION	MAKE-OR-BUY DETERMINATION

(End of clause)

1852.215-81 Proposal Page Limitations.

As prescribed in 1815.209-70(d), insert the following provision:

**PROPOSAL PAGE LIMITATIONS
(FEBRUARY 1998)**

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposal Section (List each volume or section)	Page Limit (Specify limit)

(b) A page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

1852.215-84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

**OMBUDSMAN
(NOVEMBER 2011)**

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman,

interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and e-mail address may be found at: http://prod.nais.nasa.gov/pub/pub_library/Omb.html. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

ALTERNATE I

(JUNE 2000)

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of clause)

1852.216-73 Estimated Cost and Cost Sharing.

As prescribed in 1816.307-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING

(DECEMBER 1991)

(a) It is estimated that the total cost of performing the work under this contract will be \$ ____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than ____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ ____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

1852.216-74 Estimated Cost and Fixed Fee.

As prescribed in 1816.307-70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE

(DECEMBER 1991)

The estimated cost of this contract is ____ exclusive of the fixed fee of ____ . The total estimated cost and fixed fee is ____ .

(End of clause)

1852.216-75 Payment of Fixed Fee.

As prescribed in 1816.307-70(c), insert the following clause:

**PAYMENT OF FIXED FEE
(DECEMBER 1988)**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216-76 Award Fee for Service Contracts.

As prescribed in 1816.406-70(a), insert the following clause:

**AWARD FEE FOR SERVICE CONTRACTS
(JUNE 2000)**

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1)Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the

1852.217-70 Property Administration and Reporting.

As prescribed in 1817.7004-6 and 1817.7005-3, insert the following clause:

**PROPERTY ADMINISTRATION AND REPORTING
(DECEMBER 2005)**

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Interagency Purchase Request shall be controlled and accounted for in accordance with the servicing agency's normal procedures. All excess items, however, costing \$500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

1852.217-71 Phased Acquisition Using Down-Selection Procedures.

As prescribed in 1817.7302(a), insert the following clause:

**PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES
(NOVEMBER 2011)**

(a) This solicitation is for the acquisition of _____ [*insert Program title*]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [*insert purpose of phase*]. Phase 2 is for _____ [*insert general Phase 2 goals*].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsisized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [*insert the specific Phase 1 deliverables*]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[*Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.*]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [*Insert dates below*].

Phase 1 award -

Phase 2 synopsis -
Phase 2 proposal requested -
Phase 2 proposal receipt -
Phase 2 award -

(End of clause)

1852.217-72 Phased Acquisition Using Progressive Competition Down-Selection Procedures.

As prescribed in 1817.7302(b), insert the following clause:

**PHASED ACQUISITION USING PROGRESSIVE COMPETITION
DOWN-SELECTION PROCEDURES
(NOVEMBER 2011)**

(a) This solicitation is for the acquisition of _____ [*insert Program title*]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [*insert purpose of phase*]. Phase 2 is for _____ [*insert general Phase 2 goals*].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of _____ [*indicate method of requesting proposals, e.g., by a letter*]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source all the material furnished to the Phase 1 contractors necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [*insert the specific Phase 1 deliverables*]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at